

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD MATTHEWS	:	CIVIL ACTION
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
OFFICER ARTHUR, ET AL.	:	NO. 10-cv-1215
	:	JUDGE MARIANI

**DEFENDANTS, OFFICERS ARTHUR, BOROWICZ, AND FLESHER'S
MOTION TO STRIKE PLAINTIFF'S RESPONSIVE FILINGS [DOC. 84]**

I. INTRODUCTION

1. In this purported civil rights action, Plaintiff, Richard Matthews seeks to recover damages for alleged violations of his Civil Rights purportedly caused by being maliciously and selectively prosecuted for his involvement in an assault outside of a bar.

2. Before this Honorable Court is Defendants Officers Arthur, Borowicz and Flesher's Motion to Strike Plaintiff's Responsive filings [Doc. 84] based on Plaintiff's failure to comply with this Court's April 23, 2013 Order [Doc. 76] and Local Rule 56.1.

II. STATEMENT OF FACTS

3. By Order dated April 23, 2013, this Honorable Court instructed the defendants to refile their motions in strict compliance with Local Rule 56.1. (See Doc. 76.)

4. Defendants Officers Arthur, Borowicz and Flesher complied and refilled their summary judgment motion in strict compliance with Local Rule 56.1. (See Doc. 77-83.)

5. By that April 23, 2013 Order, Plaintiff was similarly instructed to file any responsive papers in strict compliance with the Federal and Local Rules with twenty-eight (28) days of the Order. (See Doc. 76 at paragraph 2.)

6. Plaintiff did not file responsive motions within twenty-eight (28) days of this Honorable Court's April 23, 2013 Order. (See Doc. 76 and Doc. 84.)

7. It was not until May 28, 2013, that Plaintiff filed responsive motions and counter-statement of facts. (Doc. 84.)

8. Plaintiff did not seek leave of Court to file the responsive documents out of time.

9. Secondly, Plaintiff's Counter-Statement of Facts in Opposition to Defendants' Motion for Summary Judgment contains 75 numbered paragraphs. (Doc. 84-1.)

III. ARGUMENT

A. Legal Standard

10. Local Rule of Civil Procedure 56.1 of the United States District Court for the Middle District of Pennsylvania directs parties to supply "a separate, short and

concise statement of material facts, in numbered paragraphs, as to which the moving party contents there is no genuine issue to be tried.” M.D. Pa. L.R. 56.1.

11. The purpose of the short and concise statement of facts is “to structure a party’s summary judgment legal and factual theory into a format that permits and facilitates the court’s direct and accurate consideration to the motion.” Gantt v. Absolute Machine Tools, Inc., No. 1:06-CV-1354, 2007 WL 2908254, at *3 (M.D. Pa. Oct. 4, 2007).

12. The central purpose of a statement of material facts is to assist the court to expeditiously identify factual arguments. See Park v. Veasie, No. 3:09-CV-2177, 2011 WL 1831708, at *3 (M.D. Pa. May 11, 2011).

13. Local Rule 56.1 provides structure and coherence to summary judgment presentations and this Honorable Court has broad discretion is addressing the failure of a party to fully comply with this rule.

14. In exercise of that discretion, the court can strike pleadings that do not comport with the requirements of the local rule. See Hartshorn v. Throop Borough, No. 07-01333, 2009 WL 761270 at *3 (M.D. Pa. March 19, 2009).

B. Plaintiff’s Responsive Filing [Doc. 84] Must be Stricken as Plaintiff Failed to Comply with this Court’s Order and the Local Rules

15. In this case, Plaintiff’s Counter-Statement of Material Facts fails to comply with this Honorable Court’s Order and Local Rule 56.1.

16. First, Plaintiff, without leave of Court, filed his responsive papers on May 28, 2013.

17. By April 23, 2013 Order, Plaintiff was to file any responsive papers within twenty-eight (28) of the Order and in strict compliance with the Federal and Local Rules. (See Doc. 76.)

18. In addition, Plaintiff's Counter-Statement of Material Facts is not short, concise or limited to material facts.

19. The number of paragraphs in Plaintiff's Counter-Statement of Facts and the presence of non-material facts hinders this Honorable Court's direct and accurate consideration of the motion.

20. In compliance with the Local Rules, Defendants prepared an answer in with appropriate references to the record in opposition to Plaintiff's Counter-Statement of Facts.

21. Plaintiff failed to comply with this Court's Order and failed to provide a short and concise statement of facts.

22. Defendants Officers Arthur, Borowicz and Flesher respectfully request that this Honorable Court strike Plaintiff's responsive filings [Doc. 84] and deem Defendants' Statement of Facts admitted.

IV. CONCLUSION

23. Wherefore, Defendants Officers Arthur, Borowicz and Flesher respectfully request that this Honorable Court grant Defendants' Motion to Strike Plaintiff's responsive filings [Doc. 84] and deem Defendants' Statement of Facts [Doc. 79] admitted.

Respectfully Submitted,

MAYERS, MENNIES & SHERR, LLP

BY:/s/ ANTHONY R. SHERR, ESQUIRE

Attorney for Defendants

Officer Arthur, Officer Borowicz and
Officer Flesher

3031 Walton Road, Building A
Suite 330, P.O. Box 1547
Blue Bell, PA 19422-0440
(610) 825-0300
Fax (610) 825-6555

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD MATTHEWS	:	CIVIL ACTION
	:	
vs.	:	JURY TRIAL DEMANDED
	:	
OFFICER ARTHUR, ET AL.	:	NO. 10-cv-1215
	:	JUDGE MARIANI

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that on the 10th day of June 2013, a true and correct copy of Defendants, Officer Arthur, Officer Borowicz and Officer Flesher's Motion to Strike Plaintiff's Responsive Filings and Memorandum of Law in Support was served electronically upon the following:

Matthew B. Weisberg, Esquire
Weisberg Law, P.C.
7 S. Morton Ave.
Morton, PA 19070-7722

Paul G. Lees, Esquire
Marshall, Dennehey, Warner, Coleman
& Goggin
1495 Valley Center Parkway, Suite 350
Bethlehem, PA 18017

BY: /s/ ANTHONY R. SHERR, ESQUIRE
Attorney for Defendants
Officer Arthur, Officer Borowicz and
Officer Flesher
3031 Walton Road, Building A
Suite 330, P.O. Box 1547
Blue Bell, PA 19422-0440
(610) 825-0300
Fax (610) 825-6555